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09-182

UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION

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FEB 26 2010

FCC Mail Room

MEDIA OWNERSHIP WORKSHOP

Washington, D.C.

Wednesday, January 27, 2010

ANDERSON COURT REPORTING  
706 Duke Street, Suite 100  
Alexandria, VA 22314  
Phone (703) 519-7180 Fax (703) 519-7190  
[www.andersonreporting.net](http://www.andersonreporting.net)

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6 Commissioner, Federal Communications Commission

7 ROBERT MCDOWELL  
8 Commissioner, Federal Communications Commission

9 *Panel 1: Constitutional Issues in Advancing*  
10 *Minority Ownership Through the FCC's Media*  
11 *Ownership Rules*

12 **Moderator:**

13 JACOB LEWIS  
14 Acting Deputy General Counsel Federal  
15 Communications Commission

16 **Panelists:**

17 LEONARD BAYNES  
18 Professor of Law  
19 Inaugural Director Center for Civil Rights

20 CAROLYN BYERLY  
21 Associate Professor, Howard University

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PARTICIPANTS (CONT'D):

*Panel 2: How the FCC's Media Ownership Rules  
Affect Minority and Female Ownership*

**Moderator:**

THOMAS REED  
Director, Office of Communications Business  
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**Panelists:**

FAITH BAUTISTA  
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Executive Director, Minority Media and  
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Chairman and Chief Executive Officer  
The Roberts Broadcasting Companies

SYLVIA STROBEL  
Interim President, American Women in Radio and  
Television

\* \* \* \* \*

## P R O C E E D I N G S

(9:07 a.m.)

MR. LAKE: Good morning, all. I want to welcome you to this workshop, which is another in our series in connection with our quadrennial review of our media ownership rules.

Today's workshop will focus on the intersection between our media ownership rules and our policies in favor of diversity of ownership in broadcast.

We have two distinguished panels today. But I'm delighted to say that we will start off with some welcoming remarks from Commissioner Clyburn.

COMMISSIONER CLYBURN: Good morning, and thank you, Mr. Lake.

Good morning, everyone.

GROUP: Good mornings.

COMMISSIONER CLYBURN: Oh, wow. The word got out. Thank you. I appreciate it.

We have issues of the utmost importance to examine this morning, so I'll be brief. I am

1 very, so very much, looking forward to the  
2 presentations and discussions by these esteemed  
3 panelists and some of the challenges we face to  
4 increase the number of women and minority owners  
5 in the broadcast industry.

6 The Commission has fought to improve the  
7 dismal state of minority and female ownership in  
8 this arena, only to see faint progress along the  
9 way. Despite all our efforts to date, we must do  
10 better. And nothing, nothing else will suffice.

11 As our first panel today will  
12 undoubtedly discuss, there are formidable  
13 roadblocks in our path to a diverse and truly  
14 vibrant media market. The legal landscape has  
15 only become more foreboding over time, leaving us  
16 with limited options to create an environment  
17 conducive to minority and female ownership.

18 But what I ask of today's panelists, as  
19 well as of my colleagues here at the Commission,  
20 is that we persevere in the face of this steep  
21 uphill climb. Our goal is far too essential for  
22 us to yield. Let's put our heads together in

1 order to create a record, or design regulations  
2 that convey to the courts what we so clearly see  
3 as a compelling government interest, and find  
4 innovative ways to narrowly tailor our rules to  
5 achieve our worthy ends.

6 My friends, there is no -- no --  
7 stricter scrutiny than how we view ourselves at  
8 the end of every day. We are measured as public  
9 servants by what we can deliver to the American  
10 people. And I believe that if we are thoughtful,  
11 thorough and collaborative in our work, we can  
12 break through this unfortunate logjam that has  
13 left our nation's promise unfulfilled.

14 I pledge to you my full support to all  
15 of you in this endeavor. And, if my office can be  
16 of any assistance to you, please do not hesitate  
17 to let us know.

18 Thank you, panelists, for sacrificing  
19 your time, and for your commitment and for the  
20 commitment of all of those in the audience to not  
21 think it robbery to be here today.

22 I look forward to working with you to

1 make a meaningful and a positive -- or  
2 significantly-- a lasting impact.

3 Thank you and good morning.

4 MR. LAKE: Thank you very much,  
5 Commissioner Clyburn. Those thoughts will guide  
6 us through the morning.

7 We have two very distinguished panels as  
8 parts of today's workshop. The first will be  
9 representatives of the academic community. And  
10 the second, broadcasters and media advocacy  
11 groups.

12 I would like to just point out that  
13 we're being live webcast and recorded. So I'll  
14 ask all the speakers to get close to their  
15 microphones so we have good reception.

16 And we will be taking questions, both  
17 from those who are present in person, and from  
18 those who are in the webcast audience.

19 I will now turn it over to Jake Lewis,  
20 who is our Acting Deputy General Counsel, who will  
21 moderate the first panel.

22 MR. LEWIS: Thank you, Bill. The first

1 panelist is Professor Leonard Baynes.

2 Leonard Baynes is a professor of law and  
3 the inaugural director of the Ronald H. Brown  
4 Center for Civil Rights and Economic Development  
5 at St. John's University Law School. He teaches  
6 business organizations, communications law,  
7 regulated industries, and race and the law.

8 Professor Baynes received his B.S. from  
9 New York University, and a J.D./MBA from Columbia  
10 University. Amongst his many achievements, from  
11 1997 to 2001, Professor Baynes was hired by then  
12 FCC Chairman William Kennard to serve as a scholar  
13 in residence at the FCC, where he was responsible  
14 for access, opportunity and ownership issues.

15 Professor Baynes.

16 MR. BAYNES: Thank you so much for  
17 inviting me here on this very, very important  
18 topic. And I have PowerPoint slides which I plan  
19 to show if we can get them up and running.

20 And what I plan to do today are two  
21 things, in the time I have allotted. One is to  
22 sort of talk about, sort of-- a lot of people say,



1 well, the Internet, broadband, they cure all of  
2 these issues. And one of the things I think that  
3 we need to think about is the fact that -- well,  
4 that's one thing, is that broadband and Internet,  
5 one of the things you have to ask, is it the same  
6 market? Is it really a substitute for broadcast?  
7 That's one issue.

8 And the second thing I want to talk  
9 about is sort of the studies that we had worked on  
10 while I was here at the FCC, dealing with  
11 broadcast ownership and the FCC's passive  
12 complicity in terms of the discrimination in the  
13 market that took place.

14 So let me begin with the PowerPoint  
15 slides. So, under the antitrust analysis, one of  
16 the things you need to look for in terms of  
17 determining whether broadcast and Internet and  
18 broadband are the same market is whether it's sort  
19 of, can you substitute between them? Are there  
20 distinct customers or there distinct prices? Is  
21 there sensitivity to price changes, specialized  
22 vendors? And do we see them as different markets?

1           And when you look at sort of the viewing  
2 patterns and the listening patterns of people of  
3 color with respect to radio and TV, you see that,  
4 generally, it's different. And the other thing we  
5 have to look at is sort of access to Internet and  
6 broadband, and the fact that there still is a  
7 digital divide.

8           And so let's look at some of the data.  
9 I'm trying to get to the next slide.

10           So the other thing about the broadband  
11 and Internet is that we have to think about the  
12 fact that it is not free, whereas broadcast TV  
13 tends to be. There's still a digital divide  
14 between African-Americans and Latinos. And as a  
15 source of information, many people go to the same  
16 affiliated sites of the major broadcast stations  
17 and cable stations.

18           If we look at this Pew, recent Pew  
19 study, it shows that there's been increasing usage  
20 of the Internet by all population groups, but we  
21 still see there's a disparity between  
22 African-Americans, Hispanics and whites. And we

1 see that not everybody is still using the  
2 Internet. And this is Internet usage from every  
3 location.

4 If you look at broadband usage in the  
5 home -- home broadband -- you see much more of a  
6 disparity. And you still see Hispanics,  
7 especially, being particularly underserved.

8 And so the question is, if we are going  
9 to say, well let's use the Internet and broadband  
10 to sort of cure all the problems and everybody has  
11 access to everything -- well, some people don't.  
12 And a large percentage of people of color do not.  
13 And so the question is, broadband, given the --  
14 broadcast, given the fact that it's in 99 percent  
15 of individuals' homes, and Internet and broadband  
16 is still not, it's not a substitute.

17 This is another part of the Pew study,  
18 which shows that 55 percent of Americans are  
19 connected to the Internet wirelessly, 83 percent  
20 of the Americans have cell phones, and only 35  
21 percent of cell phone users actually access the  
22 Internet through their cell phones.

1           So, in terms of remote devices, access  
2 to Internet through -- not at your home, there's a  
3 still a disparity, and there's still under-usage,  
4 and it's still not going to cure the problems with  
5 respect to broadband--broadcast access to replace  
6 it.

7           So this looks at sort of the -- where  
8 there is some sort of difference, where  
9 African-Americans and Latinos actually outperform  
10 whites. And this is sort of use of the Internet  
11 with respect to wireless access to get access to  
12 the Internet. So those African-Americans and  
13 Latinos that actually use the Internet wirelessly  
14 actually outperform whites with respect to access  
15 of data through remote devices.

16           The last election, there was all this  
17 conversation about the fact that the Internet had  
18 sort of changed everything, and there was all this  
19 participation, et cetera. The Pew study showed  
20 that there really was a lot of involvement in the  
21 population, but that the Internet basically you  
22 had to be affluent or well-educated, really, to

1 use it. That that's where the growth was. So  
2 that it reaffirmed a lot of the statistics that we  
3 have with respect to disengagement, or lack of  
4 use, by people of color as opposed to whites, in  
5 terms of comparison.

6 And when the Pew study looks at this,  
7 where the people of color were very much involved  
8 in offline communication, it was almost similar,  
9 if you look at blacks and whites in terms of the  
10 political participation. But when you look at  
11 online communication, you still see a disparity  
12 between blacks and whites. And the Latinos that  
13 they surveyed, it was too few in number to  
14 actually give a percentage.

15 For social media, such as Facebook, et  
16 cetera, what you find is that the Pew study said,  
17 yes, there's been a great increase in growth by  
18 those under 35, in terms of political  
19 participation, civic participation, et cetera.  
20 But what you find is that there's still a gap. It  
21 may be a closed gap -- between those who are  
22 affluent and educated and those who are not.

1           So I think the difference is that what  
2       we see with respect to broadcasting is that  
3       broadcasting is really fairly ubiquitous. But  
4       what we have in terms of what is covered is that  
5       there is over-sensationalism, in terms of the  
6       coverage, focus on conflicts. They often don't  
7       cover the issues that really affect people's  
8       lives.

9           And I'm going to -- I see I'm -- let me  
10      skip to sort of the studies that we worked on.

11          So what we look at with respect to the  
12      studies that the FCC had conducted during the late  
13      '90s that were released in 2001, one of the  
14      important things, I think, to take note of is that  
15      even though we had comparative hearing process to  
16      distribute licenses, most licenses actually were  
17      distributed through Singleton process. Over 6,000  
18      licenses were distributed through not a  
19      comparative hearing, where there was only one  
20      applicant. And only the comparative hearings had  
21      preferences, or enhanced consideration, for people  
22      of minority backgrounds.

1           And so that's important because what you  
2       find with the study--so, let me skip forward-- is  
3       that 74 percent of non-minority initial applicants  
4       never competed in a comparative hearing, whereas  
5       35 percent of minority initial applicants never  
6       competed in comparative hearings.

7           So what this shows -- this is an  
8       important point -- is that non-minorities were  
9       more likely to get licenses through a Singleton  
10      process where there was no competition, where  
11      there was no affirmative action process. Whereas  
12      for minorities, that was less likely -- much less  
13      likely. So if you were a non-minority, the  
14      chances of getting a license were much greater  
15      because there was no competition.

16           And, in fact, what would happen is that  
17      even though you had minority enhancements, you'd  
18      have more people going after the initial minority  
19      applicant.

20           So as a result -- this was a study that  
21      we had conducted, showed that the minorities and  
22      non-minorities, even if you take all this into

1 account, basically had almost a similar rate of  
2 getting the license -- 45 percent, versus 44  
3 percent. And what also happened is that you often  
4 had more minorities actually participating in the  
5 process through the comparative hearing process.  
6 The number of minorities actually increased. So,  
7 3.7 on average versus 3.2 for non-minorities.

8 For minorities versus women versus  
9 non-minorities, you see also this increase with  
10 respect to the number of minorities and women in  
11 terms of the number of applicants.

12 And part of this was a way for  
13 non-minorities probably to game the comparative  
14 hearing process.

15 This is sort of other examples of this.  
16 But when it came to actually who got the licenses,  
17 those applicants that actually were  
18 minority-owned really did no -- did really worse  
19 than those that had minority participation. Which  
20 showed that there were a lot of minority  
21 applicants that were probably being used as  
22 fronts.



1           The studies also show that, you know, in  
2 terms of loans, which are sort of the lifeblood in  
3 terms of getting the licenses, that there was  
4 capital market discrimination in terms of interest  
5 rate amounts, getting the loans themselves, et  
6 cetera. Minority borrowers paid higher interest  
7 rates, et cetera.

8           There was also advertising  
9 discrimination, in terms of "no urban, no Spanish"  
10 dictates. Minority discounts -- I saw Cathy  
11 Sandoval in the audience, who was working on that.  
12 I saw her somewhere -- hi, Cathy.

13           And so as a result, KPMG, which did the  
14 study, found that there was a lower overall  
15 probability of minorities actually getting a  
16 license, a winning license, than non-minorities --  
17 even despite you had, the fact, that you had these  
18 minority enhancements during this process.

19           As a result, you know, one of the issues  
20 you have here is that you have to look at what the  
21 standard is for review. And one of the issues  
22 that you have in the Croson case is that if you

1     distribute licenses in an industry or a market  
2     that might be discriminatory and you realize that  
3     you're doing that, the FCC may be passively  
4     complicit in that discrimination. And that's  
5     something I think the FCC needs to take into  
6     account. Because it's been many, many years  
7     before the FCC has actually had minority-ownership  
8     policies.

9             And the question is -- and this is my  
10     final, I know I'm sort of running out of time --  
11     but to sum it up, is that you're never going to  
12     have a perfect solution. The FCC really needs to  
13     just get off the dime. Because if they're looking  
14     for a silver bullet, we'll never really know,  
15     because the problem is that there have been no  
16     cases since Metro Broadcasting, which there's now  
17     a different standard of review. And we'll never  
18     know, until there's a case that's actually  
19     brought.

20             And so what I challenge the FCC to do is  
21     sort of think about creative ways to make sure  
22     that minorities actually are able to fully

1 participate in the broadcast industry.

2 Thank you.

3 MR. LEWIS: Thank you, Professor Baynes.

4 I see, Bill, that Commissioner McDowell is now  
5 here in the room. So perhaps we can divert to  
6 him.

7 MR. LAKE: Yes, welcome. We'd welcome  
8 some remarks from you.

9 COMMISSIONER McDOWELL: Thanks so much.  
10 Sorry for being late. Traffic, what can I say?  
11 For those of you who are natives, you know what  
12 I'm talking about. It's awful.

13 All right. I'll condense this, because  
14 I hate interrupting, and I didn't want to disrupt.  
15 So, first of all, I appreciate everyone being here  
16 today -- everyone else who was able to make it on  
17 time.

18 So I really welcome everyone's thoughts  
19 on what the Commission can do to promote  
20 opportunities for minorities and women through our  
21 media ownership rules, as well as any  
22 ownership-related initiatives that you may be

1 exploring.

2 As many of you know, I've been an active  
3 supporter of the Commission's recent efforts to  
4 support new and existing minority broadcasters,  
5 including -- I heard mentioned earlier -- the ban  
6 on discrimination in advertising, the so-called  
7 "no urban, no Spanish" dictates, which is very,  
8 very key, I think, and relaxing certain  
9 attribution rules to encourage greater investment  
10 in licensees controlled by small businesses, small  
11 business- eligible entities, including those owned  
12 by women and people of color.

13 Throughout my time as a Commissioner,  
14 I've called for a greater awareness of the  
15 financial realities that face small enterprises  
16 and new entrants -- of course, including  
17 minorities and women. Changes in our ownership  
18 rules alone, though, as I think as was already  
19 said, won't achieve much if the intended  
20 beneficiaries can't obtain the financing they need  
21 to make their aspirations a reality. A very  
22 important color in all of this equation is the

1 color green, of course.

2 Now, while the government cannot address  
3 all aspects of the situation, I favor taking  
4 action when we have a good legal and factual basis  
5 for doing so. So, for example, for some time now  
6 I've urged that the Commission offer active  
7 assistance to Congress in fashioning a legally  
8 sustainable tax certificate program to promote  
9 ownership of communications companies by  
10 economically disadvantaged businesses. And I'd  
11 like to get your reactions and advice on this  
12 concept in particular. And I've been calling for  
13 that for several years now.

14 Similarly, I wonder whether maybe some  
15 small, small silver lining in the current economic  
16 situation that we find our country in, but  
17 especially for broadcasters. So de-consolidation,  
18 as a result, seems to be the current trend among  
19 some of the largest station-group owners. And  
20 that actually may, in turn, offer up some new  
21 opportunities for small entities, and new entrants  
22 coming into the business for the first time.

1           So if the panelists today, and going  
2 forward, have any suggestions in that regard, I  
3 would be very, very interested in hearing them.  
4 So let's make some really tasty lemonade, maybe,  
5 out of the economic lemons we've been handed here  
6 recently.

7           Finally, I know that this panel will  
8 take on the most critical component of any future  
9 effort to craft race-conscious ownership rules,  
10 the substantial hurdles that the Commission or any  
11 government agency faces, to satisfy the demands of  
12 the Due Process clause as set forth under the  
13 Supreme Court's Adarand decision.

14          So I'd like to say this over and over --  
15 whether it's in this context or another context,  
16 I'd really like to be upheld in court. And so I  
17 think it can actually be counterproductive to take  
18 a step forward but only to be knocked back several  
19 steps by the courts. So let's measure twice and  
20 cut once, and make sure what we do actually might  
21 be upheld on appeal. I think that's very, very  
22 important.

1                   So, in any case, I look forward to the  
2                   dialogue as it progresses today and hereafter, and  
3                   as it has been progressing over the years. And I  
4                   know Rosemary Harold will be here -- my legal  
5                   advisor for all things media will be here -- to  
6                   monitor this panel in more depth, as I've got a  
7                   very busy morning ahead of me, unfortunately.

8                   But thank you all very, very much, and I  
9                   will be monitoring everything you say in here with  
10                  great interest.

11                 Thank you again.

12                 MR. LEWIS: Thank you, Commissioner  
13                 McDowell. Our next panelist is Carolyn Byerly.  
14                 Dr. Byerly is a member of the Department of  
15                 Journalism and Graduate Faculty Member, Mass  
16                 Communication and Mass Studies Program at Howard  
17                 University. She is also a cofounder and  
18                 participant in the Howard Media Group, a  
19                 collaboration among communications scholars  
20                 involved in applied research and other activities  
21                 that have the goals of expanding race and gender  
22                 equality in media industries.

1           She is the co-author, among other  
2 things, of Women in Media: a Critical  
3 Introduction, and the co-editor of Women in Media:  
4 International Perspectives.

5           Welcome, Dr. Byerly.

6           MS. BYERLY:: : Good morning. Thank you  
7 very much. I appreciate the opportunity to speak  
8 to you this morning, especially since I seem to be  
9 the only non-attorney in the lineup here. I'm not  
10 quite sure how that happened, except my colleagues  
11 and I keep company at a lot of these kinds of  
12 events.

13           My training is in social science  
14 research. For two decades I've been concerned  
15 with examining the dynamic relationship of women  
16 in media -- sorry, women and people of color to  
17 the news and other media.

18           With me today are, or soon will be, I  
19 hope, in the audience, two of my colleagues,  
20 Reggie Miles, and Dr. Yong Jin Park. We are part  
21 of the Howard Media Group that our colleague down  
22 the table here mentioned. The remarks that I'll



1 share today represent our shared thinking.

2 We will leave it for our scholars today  
3 -- the legal scholars -- to speak to the finer  
4 points of the law as regards the policy. And what  
5 I would like to do is try and map out some broader  
6 social-science type themes that represent the kind  
7 of research we believe needs to be done so that  
8 the Commission has all of the facts that it needs  
9 to consider women and minority ownership.

10 Media ownership in the United States  
11 today divides along the historic fault lines of  
12 gender and race. The low, single-digit ownership  
13 rates for women and people of color in broadcast  
14 say quite loudly that the nation is faced with  
15 both a women's rights and a civil rights crisis in  
16 policy. The seriousness of the situation must be  
17 understood within the context of a nation moving  
18 rapidly toward racial and ethnic plurality with  
19 nobody having a majority.

20 The media today do not, and cannot serve  
21 the public interest as long as this skewed media  
22 ownership pattern continues. And the situation